

June 1, 2012

Office of the Federal Register
The National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740

Submitted via www.regulations.gov

Comments of Consumers Union to the National Archives and Records Administration
on

**“Incorporation by Reference; Announcement of a petition for rulemaking
and request for comments”**

Docket No. NARA 12-0002

Consumers Union,¹ (CU) the advocacy and public policy arm of *Consumer Reports*®, appreciates the opportunity to offer comments to the Office of the Federal Register (OFR) on a petition to amend 1 CFR part 50, which regulates the incorporation by reference of material into the Code of Federal Regulations (CFR). The petition in question, submitted by scholars and practitioners of administrative law, argues that the public should not be forced to pay for access to mandatory standards developed by private standard-setting organizations simply because the government incorporated those standards in law by reference.

Consumers Union strongly supports this position.

1 CFR part 51 requires that any private standards incorporated by reference must be “reasonably available to and usable by the class of persons affected by the publication.”² In the past, when voluminous standards could only be made available in print form, it may have been reasonable to expect that the public pay a fee to access them, to, for example, cover printing costs. Today, however, with the advent of electronic reading rooms where agencies can store or hyperlink an unlimited amount of data at very low cost, requiring individuals to pay in order read public laws no longer makes sense.

Consumers and consumer representatives are within the “class of persons affected by the publication” of these standards and should be able to access standards without having to pay for them.

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world’s largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² 1 CFR part 51.

Consumer groups, in particular, play an important role in ensuring that the standards established are sufficiently protective of consumer health and welfare. *Consumer Reports*®, for example, often tests consumer products and evaluates mandatory and voluntary standards for efficacy. We use our findings to push for stronger and more protective standards for consumers. In addition, consumer groups can monitor the marketplace for compliance with standards, and can point out bad actors. Consumer Reports has, on several occasions, notified the Consumer Product Safety Commission and warned consumers about products that do not comply with existing standards, thus creating a public safety hazard. In order for non-profit consumer groups like ours to play this crucial role, however, they need easy and free access to relevant standards.

Not only consumer representatives, but also consumers themselves should be able to access and read standards for free. Free public access to laws is an essential component of any democratic society. All citizens, not just those directly subject to regulation, are affected by these standards and thus have a vested interest in being able to access them, easily and free of charge. Some of the standards may be dense and complicated, but others are fairly straight forward and easy to understand. The bottom line is that even if not every citizen wishes to read every part of every standard, these standards constitute U.S. law and consumers should be able to look at them if they wish to do so. Requiring consumers to pay a fee to access these standards is a significant obstacle. It will inevitably reduce consumer access, thus violating the “reasonably available” requirement.

Consumers Union urges you to revise the current regulation and give the public free access to standards incorporated into law by reference. Advances in technology and the Internet should make this a relatively easy and cheap means to distribute information. In today’s digital age, it simply no longer makes sense to force the public to pay what are at times prohibitive fees to read U.S. laws. We support the above-mentioned petition and look forward to working with you on this important matter in the future.

Sincerely,

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